## APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 20082

J. P. GREATHOUSE STEEL ERECTORS, INC.,
a corporation, *Appellant*,

v.

BLOUNT BROTHERS CONSTRUCTION COMPANY, *Appellee*.

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Appeal from the United States District Court
for the District of Columbia

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Decided February 8, 1967

Before Bazelon, Chief Judge, Edgerton, Senior Circuit Judge, and Wright, Circuit Judge.

Edgerton, Senior Circuit Judge: A subcontract between appellee Blount Brothers Construction Company (Blount) as general contractor and appellant J. P. Greathouse Steel Erectors, Inc., (Greathouse) as subcontractor, provided that "If any question of fact shall arise under the contract . . . either party hereto may demand an arbitration . . ." Greathouse quit the job because of disputes between the parties and Blount completed the work Greathouse had begun.

Greathouse sued Blount for breach of contract and demanded a jury trial. Instead of filing an answer, Blount moved for an order "directing plaintiff to proceed forth-

with to arbitrate the disputes which have arisen under the contract . . .'' The District Court granted the motion, ordered ''that plaintiff and defendant proceed forthwith to arbitrate all matters in dispute which are subject to arbitration under the contract between them,'' and stayed proceedings in the suit ''subject to the further order of the Court upon issuance of the arbitration award.''

Greathouse claimed $21,130.75 from Blount in the arbitration proceedings and Blount claimed $157,742.38 from Greathouse. The arbitrators held a hearing and made an award that Greathouse pay Blount $50,000, plus an attorney's fee of $4,400, and also pay the entire expense of the arbitration. The arbitrators made no findings of fact, conclusions of law, or other explanation of their award. The court denied Greathouse's motion to vacate the award, granted Blount's motion to confirm it, and entered judgment on the award.

As we understand the subcontract, its arbitration clause covers only questions of fact. Though it provides for the naming of arbitrators, in certain circumstances, by the American Arbitration Association, it does not adopt the provision which the Association's rules recommend that ''Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration . . .'' It seems clear that the parties did not intend, by the narrow language they used instead of the broad language recommended by the Association, to agree to arbitrate claims for breach of contract that involve questions of law as well as fact.

Appellee does not dispute this, but contends that no questions of law were involved in the unexplained award which the arbitrators made. We disagree. Greathouse and Blount charged each other with various breaches of contract. Neither party claimed that it had fully performed the contract. The respective claims involved not only the question what each party had done or failed to do but also

the question which party, if either, as a matter of law was excused for his non-performance by the other's failure to perform. If the unexplained award of the arbitrators had any rational basis, they must have decided questions of law. They thereby exceeded their authority.

The arbitrators exceeded their authority in other respects also. They required Greathouse to pay all the expenses of the arbitration, although the subcontract provided that "Each party shall pay one-half the expense of such reference." They required Greathouse to pay Blount an attorney's fee of $4,400. The subcontract provided that if Blount should employ an attorney "to enforce any provision hereof," Greathouse would pay Blount its reasonable attorney's fee. But what Blount is seeking to enforce is not a provision of the contract. It is an award that is not authorized by the contract.

Accordingly, the District Court should have granted Greathouse's motion to vacate the award, 9 U.S.C. § 10(d) (1964). The judgment is reversed, the award vacated, and the cause remanded for a jury trial.

Reversed and remanded.

## APPENDIX B

Title 9 U.S.C., Section 11:

> In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—
>
> (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
>
> (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
>
> (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

## APPENDIX C

AMERICAN ARBITRATION ASSOCIATION

### SUBMISSION TO ARBITRATION

Blount Brothers Construction Company
J. P. Greathouse Steel Erectors, Inc.

Date: June 10, 1965

The named Parties hereby submit the following dispute to arbitration under the COMMERCIAL ARBITRATION RULES of the American Arbitration Association:

In 1960 and 1961 Blount Brothers Construction Company (Blount) entered into a series of written construction contracts with the District of Columbia Highway Department and one subcontract with Peter Kiewit Sons (dated June 22, 1961) under all of which J. P. Greathouse Steel Erectors, Inc. (Greathouse) was Blount's reinforcing steel erection subcontractor. On September 28, 1962, Greathouse notified Blount that it was abandoning work on the projects in question "due to finances", and the work covered by the Greathouse subcontract was thereafter completed by Blount.

A. Blount contends that its completion of the work was pursuant to express provisions of the subcontract under which it is entitled to be paid for the cost thereof in the amount of $157,742.38, together with reasonable attorneys' fees as also provided in the subcontract.

B. Greathouse contends that Blount breached the contract between the parties by failing to make progress payments in the correct amounts when they were due, and claims the amount of $21,130.75 from Blount. Greathouse further says that Blount's cost of completing the job is unreasonable.

Amount of money involved: $178,873.13.
Number of Arbitrators desired: three
Place of Hearing: Washington, D. C.

We agree that we will abide by and perform any Award rendered hereunder and that a judgment may be entered upon the Award.

Name of Party Blount Brothers Construction Company

Address 79 Commerce Street, Montgomery, Alabama

Signed by FREDERICK A. BALLARD
Frederick A. Ballard

Name of Party J. P. Greathouse Steel Erectors, Inc.

Address Box 22164, Fort Lauderdale, Florida

Signed by IVAN J. SHEFFERMAN
Ivan J. Shefferman, Attorney